THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8525 of 2005

Between:-

Sri Vinayaka Nagar House Plot Owners Welfare Association (Regd. No. 333/96), Visakhapatnam-16 rep., by its President Sri K. Sambamurthy.

Petitioner

And

The District Collector, Visakhapatnam and four others.

Respondents

ORDER :

The writ petition is filed seeking a writ of Mandamus 'declaring the inaction on the part of the respondents in taking appropriate decision in the matter of re-conveyance of the acquired lands belonging to the Members of the petitioner-Association in survey No. 186/4L (186/4B2) of Lakshmipuram, Hamlet of Kanithi village and Survey number 121/1A of Vadlapudi village, Visakhapatnam besides putting the same to use other than for the purpose for which it was acquired is arbitrary, illegal, violative of Article 300A of the Constitution and consequently direct the respondents to take a decision forthwith in the matter of re-conveyance of the acquired lands belonging to the Members of the petitioner-association in survey No. 186/4L (186/4B2) of Lakshmipuram, Hamlet of Kanithi village, Visakhapatnam and in survey Number 121/1A of Vadlapudi village, Visakhapatnam and pass such other order or orders as are deemed fit and proper in the circumstances of the case.'

The facts in brief:-

The petitioner is a registered society represented by its President. The members of the petitioner-society owned individual plots of land in survey Nos. 121/1A of Vadlapudi village, and survey No. 186/4L (186/4B2) of Laxmipuram, Hamlet of Kanithi village; Gajuwaka Mandal, Visakhapatnam district. In 1970 one N. Viswanadham had prepared a lay out for a total extent of Ac.16-00 situated between Lakshmipuram and Vadlapudi villages. The lay out comprised over one hundred (100) plots. The members of the petitioner-society purchased house sites from N. Viswanadham by way of registered sale deeds and by paying valuable consideration.

During 1979-80, the 2nd respondent acquired the entire extent of land comprising the plots in the lay out prepared by N. Viswanadham along with other extents of land in the vicinity, for the purpose of laying railway tracks to the sliding of the Vishakapatnam Steel Plant. Award Nos. 11 of 1979 and 03 of 1980 dated 31-12-1979 and 09-05-1980 were passed, it now transpires, after issuing notices to N. Viswanadham, but without notice to the members of petitioner-association, even though they had purchased the lands under registered sale deeds. According to the petitioner, neither itself nor any of its members had any knowledge of the acquisition proceedings or of the passing of the awards. Subsequent to the acquisition, however, the Railways surrendered the acquired lands to the State Government as they was not required for the purpose (of laying railway tracks). Thereupon, the respondent Nos. 1 and 2 are stated to have handed over the lands surrendered/declined by the railways to the 3rd respondent for the purpose of industrial use. As the 3rd respondent had apparently no use of these lands, the respondent Nos. 1 and 2 had at one stage decided to re-convey the lands to the original owners; and according to the petitioners, some of the lands were re-conveyed

in 1985 to some others in respect of the same package of acquisition, particulars of such re-conveyance to the earlier owners is pleaded in paragraph No.3 of the affidavit accompanying the writ petition.

The petitioner on coming to know of the re-conveyance to others and denial of similar benefit to its members, filed W.P.No. 24630 of 1997 impleading the respondent Nos. 1 to 3 herein and sought a declaration that the inaction of the respondents (in re-conveying the surplus lands acquired under Award Nos. 11 of 1979 dated 31-12-1979 and Award No. 22 of 1981 dated 26-11-1981 in respect of the lands in survey Nos. 186/4L in Lakshmipuram village, Kanithi mandal and survey No. 121/1A in Vadlapudi village, Gajuwaka mandal, Vishakapatnam district, is illegal and a consequential direction to re-convey the lands to its members.

By the judgment dated 11-06-1999, the above writ petition was disposed of by a learned single Judge of this court. This court concluded that the members of the petitioner-Association were not aware of the acquisition proceedings as their names were not reflected in the draft notification; that though the awards were passed determining the compensation, no compensation was paid to the land owners and that the compensation amount was deposited in the civil court and was lying in deposit as such. This court further recorded that despite the representation of the petitioner, no action was taken by the 1st respondent herein. In the aforesaid circumstances, this court observed that there should not be any difficulty for re-conveyance of the land to the earlier owners, as the land was not required for the public purpose for which it was acquired. This court permitted the petitioner to make a representation to the District Collector as well as to the Andhra Pradesh Industrial Infrastructure Corporation, within two weeks seeking re-conveyance of the land and directed that on receipt of such representation, both the authorities should take a decision in

accordance with law and dispose of the same within eight (8) weeks thereafter.

On 08-07-1999 the petitioner submitted a representation to the 2nd respondent seeking re-conveyance and setting out the chronology of events, which have been briefly adverted to above.

On coming to learn that the lands were likely to be allotted for rehabilitating persons dispossessed of lands for the formation of the proposed Gannavaram Port, even while the petitioner's representation dated 08-07-1999 remained un-disposed (despite a direction of this court in W.P.No.24630 of 1997), this writ petition is filed seeking the relief already adverted to.

The above is the factual substratum.

The 2nd respondent has filed a counter affidavit purportedly on his own behalf and on behalf of respondent Nos. 1,4 and 5; the 5th respondent being the State of Andhra Pradesh represented by its Principal Secretary to the Government in the Revenue Department and the 1st respondent being the District Collector.

The 2nd respondent's counter affidavit asserts:

(a) That subsequent to the directions of this court in the judgment dated 11-06-1999 in W.P.NO. 24630 of 1997 and in view of the consent given by the APIIC in the year 2000, the then Joint Collector, Vishakapatnam has submitted re-conveyance proposals to the Government by the letter dated 08-02-2001 to an extent of Ac.16.37 cents; and that the proposals are pending at Government level and no orders are passed.

If the 2nd respondent is also representing the 5th respondent Government, as is asserted in the counter affidavit of the 2nd

respondent, it was the obligation of the 2nd respondent to have stated as a representative of the 5th respondent Government as to why the proposals sent by the Joint Collector are un-disposed of by the Government and what orders were passed on the specific claim of the members of the petitioner's-association seeking re-conveyance and in the light of the directions in W.P.No. 24630 of 1997. At any rate, this court had issued a Mandamus to the 1st respondent-District Collector and APIIC to dispose of the petitioner's representation and the 1st respondent was obliged to have replied to the petitioner informing the decision taken on its representation. The Mandamus issued by this court enjoined the 1st respondent as an executive agency to implicitly obey the command of this court which constitutes a plenary exercise of sovereign power within the judicial power of the State. Failure of the 1st respondent to have implemented the mandate of this court, which was merely to dispose of the representation of the petitioner, constitutes a defiance of the law.

The 2nd respondent's counter affidavit which is the sole affidavit on record on behalf of the respondents is a classic illustration of the carelessness, callousness and gross negligence of respondent Nos. 1,2,4 and 5 through the counter affidavit of the 2nd respondent.

Though the District Collector and the State Government had apparently delegated the power and authority to file a counter to the 2nd respondent, the callousness and gross negligence of the 2nd respondent must vicariously be owned by respondent Nos. 1 and 5 as well since the delegation to file a counter affidavit does not appear to be reserved with any oversight power nor was any oversight exercised by respondent Nos. 1 and 5 on the counter affidavit filed by the 2nd respondent. This court records with deep concern and considerable regret the utterly callous and negligent attitude of executive agencies

to the need for at least minimal discipline and forensic standards in responding to solemn legal proceedings. Unprofessional executive agencies are clear illustrations of apathetic governance even in democratic regimes and the conduct of respondent Nos. 1,2,4 and 5 highlights this example of negligence and incompetence.

The other paragraphs in the counter affidavit of the 2nd respondent set out the factual circumstances in which the railways declined to take possession of the acquired lands, the reasons why the members of the petitioner association were not listed in the acquisition notification or issued notice for the award inquiry; the circumstances in which the land was handed-over to the APIIC in 1990; the reason why the APIIC had consented to the re-conveyance of the acquired lands to the earlier owners; and reiteration of the fact that the proposals were submitted to the Government for re-conveyance and that the proposals were pending. Paragraph No.9 of the counter affidavit of the 2nd respondent states that in a memo dated 13-10-2005, the State Government had directed the 1st respondent not to re-convey the lands as per the orders issued by the Revenue Department in G.O.Ms.No.783 Revenue (L.A.) Department dated 09-10-1998, as the Government had decided to develop the Ganagavaram Port and this land was necessary for its rehabilitation programmes *qua* the proposed Gangavaram Port.

In the entirety of the 2nd respondent's counter affidavit, there is not even a mention that the 1st respondent had taken a decision on the petitioner's representation dated 08-07-1999, as he was obliged to take, pursuant to the judgment of this court dated 11-06-1999 in W.P.NO. 24630 of 1997. There is not a syllable in the counter affidavit stating when the decision was taken by the District Collector and when it was conveyed to the petitioner.

In the considered view of this court, the counter affidavit filed by

the 2nd respondent constitutes an act of vagrancy in a solemn judicial proceedings and requires to be seriously dealt with and administratively by the State Government including the negligent conduct of the respondent Nos. 1 and 5 in not caring to verify the counter is filed by the 2nd respondent exercising the authority on behalf of the above respondents.

In ***CHANDRAGAUDA RAMGONDA PATIL v. STATE OF MAHARASHTRA (1)***, the Supreme Court has held that the frustration of one public purpose for which the land is acquired by the Government would not entitle the owners of the lands so acquired to re-conveyance of the acquired lands; that the acquired land becomes the property of the State and the State may in the plenitude of its discretion employ the lands so acquired for any other governmental or public purpose as well. On principle and authority therefore the members of the petitioner association have no legal right for re-conveyance of the lands acquired in the year 1990.

On 14.8.2006 a counter affidavit on behalf of the 3rd respondent was filed. To the extent relevant and material to this *lis*, the 3rd respondent's counter states that the land acquired for the Viskakhpatnam Steel Plant (VSP) for laying railway track for the steel plant was handed over to the APIIC as per the directions of the Government. Subsequently part of those lands were handed back to the VSP as per the instructions of the State Government. According to the 3rd respondent, it is not aware about the reconveyance of several extents of land by the LAO/VSP to the respective owners or to the family members of N.Viswanatham. The 3rd respondent states that the land handed over to the APIIC by the VSP could not be used by it as these were scattered and were not in contiguous blocks. In short the 3rd respondent disowns any responsibility or a decision making power

and authority in respect of the petitioner's representation for reconveyance of the lands to its members.

On 31.8.2006, this court, noticing the unresponsive counter affidavit filed by the 2nd respondent also on behalf of the respondents Nos. 1, 4 and 5, directed the respondents 1 and 5 i.e., the District Collector, Visakhapatnam and the State of Andhra Pradesh represented by the Principal Secretary to Government, Revenue Department, to file individual counter affidavits responding *inter alia* to the petitioner's allegation that discriminatory standards were employed in exercising the power of reconveyance. These respondents were directed to spell out why reconveyance was ordered in respect of some of the persons whose lands were acquired for the railway siding (for the VSP) and why the members of the petitioner's association were denied similar treatment.

Pursuant to the above order of this court, separate counter affidavits were filed by the District Collector (R1) and the Special Chief Secretary to Government, Revenue Department (R5).

To the extent relevant, the 1st respondent's counter affidavit avers that subsequent to the directions issued by this court in W.P. No. 24630/97 (judgment dated 11.6.99), the Joint collector, Visakhapatnam had submitted reconveyance proposals to the Government in a letter dated 8.2.2001 to the extent of Ac.16.37 cts, and these proposals were pending with the Government and no orders passed. As no orders were passed by the Government, the lands in Kanithi village in an extent of Ac.35.00 including the lands acquired from the members of the petitioner's association, were proposed for rehabilitation of persons displaced on account of the Gangavaram Port. At this stage the present writ petition has been filed. The 1st respondent's counter further states that the State Government in a memo dated 13.10.2005 ordered that the lands acquired (in Sy.No.186/4C of Kanithi village and

Sy.No. 121/1A of Vadlapudi village) which were not utilised for the purpose for which they were acquired must now be utilized for another public purpose in terms of the orders in G.O. Ms. No.783 Revenue Department (LA) Department dated 9.10.1998 and directed the answering respondent not to reconvey the land and take further action accordingly. While so, the 1st respondent states, this land was required for the establishment of a rehabilitation colony for the displaced persons of Gangavaram Port and therefore a proposal was sent by the office of the answering respondent to the Government by a letter dated 27.5.2005 requesting not to reconvey the said land. Subsequently the Government by a memo dated 13.10.2005 directed that the Government in G.O.Ms.No. 783 dt 9.10.1998 had ordered that the land acquired for a public purpose under the Land Acquisition Act 1894 ('the Act') should be utilized for the same purpose for which it was acquired, as far as possible. In case, the land is not required for the purpose for which it was acquired, for any reason, the land must be utilized for another public purpose as deemed fit, including afforestation; and also directed the District Collector not to reconvey the land as the land in the above Sy.Nos. is required for rehabilitation of persons displaced on account of the Gangavaram Port. The 1st respondent concluded by stating that the State has taken a policy decision in G.O.Ms.No. 783 dated 9.10.1998 and that the land was reconveyed to Smt. K. Appayamma and others long before the policy decision dated 1.9.1998. The 1st respondent asserted that as the Supreme Court in a series of judgments had rejected the claim that land owners were entitled to reconveyance of acquired lands, if the original purpose for which the acquisition was made, was not fulfilled for any reason and the court have held that such land acquired becomes the property of the State and could be utilized for any other public purpose, the petitioner is not entitled to the relief it seeks.

The counter affidavit of the 5th respondent, dated 7.9.2006 :

A) That on acquisition of the lands in Kanithi and Vadlapudi villages, during the year 1979-80 for the specific purpose of laying railway track to the siding of the VSP, an award was passed and the award amount was deposited in the civil court u/Sec.31(2) of the Act.

B) It is admitted that Ac.6.87 cts, in Vadlapudi village was reconveyed to Karanam Appayamma and others and an extent of Ac.1.01 cts, to Smt. N.Laxmi Narasamma w/o late Viswanadham.

C) Pursuant to the decision of this court in W.P. No.24630/97 (by the petitioner herein) the 3rd respondent by a letter dt 4.8.99 stated that it has decided to retain the land in Kanithi and Vadlapudi village for industrial housing to meet the growing demand for industrial workers at Visakhapatnam.

D) The 2nd respondent had again rejected the petitioner's request vide letter dated 12.10.99 stating that the lands were required by the 3rd respondent to meet the need for industrial housing.

E) Thereafter the APIIC by its letter dated 18.9.2002 communicated to the petitioner its consent for reconveying the land in Kanithi and Vadlapudi villages.

F) On the basis of the APIIC's consent, the Joint Collector, Visakhapatnam, sent a proposal to the State Government in the Industries & Commerce Department for reconveyance of the land, by the letter dated 8.2.2001. This proposal was only in respect of the land in Kanithi village. No proposal in respect of the acquired lands in Sy.No. 121/1A of Vadlapudi village were put up by the Joint Collector, as this land continued in the possession of the APIIC.

G) This land was seen to be required for establishment of a

rehabilitation colony for persons displaced on account of the Gangavaram Port. Therefore, the 1st respondent addressed the State Government by a letter dated 27.5.2005 requesting not to reconvey the land. Thereafter the Government by letter dated 13.10.2005 informed the 1st respondent that in view of the orders in G.O.Ms.No. 783 Revenue Department 9.10.1998, the 1st respondent should not reconvey the land as it is required for rehabilitation purpose (of Gangavaram Port).

The 5th respondent after setting out the aforementioned chronology of the relevant events states that in view of the settled law the petitioner is not entitled for reconveyance of land and there is no discriminatory treatment as the reconveyance was made earlier (in favour of K.Appayyamma and N.Laxmi Narasamma), in view of the circumstances then prevailing. At present since the lands are required for rehabilitating the persons displaced on account of Gangavaram Port, reconveyance cannot be made as the acquired land is required for such other public purpose.

A brief chronology of relevant events :

i) During 1970-72 members of the petitioner's association purchased land in Sy.No.121/1A of Vadlapudi village and in Sy. No.186/4L 186/4B-2 of Kanithi village, through registered sale deeds.

ii) During 1979-80 the lands were acquired after a due process under the provisions of the Act for laying a railway track to the siding of the VSP. Despite members of the petitioner's association having purchased the lands about a decade back and through registered sale deeds none of them were issued notices nor their names specified in the proceedings under the Act.

iii) Award No. 11/79 in respect of lands of Kanithi village and

Award No. 3/80 in respect of lands of Vadlapudi village were passed on 31.12.1979 and 9.5.1980, respectively. As the owners (the members of the petitioner Association) did not come forward to claim the compensation amount in respect of the lands owned by them (as they were not aware of the acquisition proceedings), the compensation amount in respect of such lands was deposited in the civil court u/Sec. 31(2) of the Act. Till date the compensation amount has not been received by the members of the petitioner's society, is the assertion.

iv) On 4.8.1984 the Railways indicated to the VSP the actual requirement of land for laying the railway track for the siding and suggested reconveyance of the remaining land to the original owners.

v) On 17.6.1985 the 1st respondent authorized the 2nd respondent by a letter to reconvey the land to the original owners subject to repayment of the land value.

vi) The 2nd respondent pursuant to the 1st respondent's orders above, on 6.9.1985 reconveyed an extent of Ac.6.87 cts, in Sy. Nos. 122/1, 2 and 123/7 & of Vadlapudi village in respect of which Award No.22/1 dated 26.11.191 was passed, to the original land owners including Karanam Apayyamma. On 12.4.1987 the 2nd respondent reconveyed the unutilized land to 8 other original owners regarding land in Vadlapudi village, in respect of which Award No.3/80, dated 9.5.1980 was already passed. Again on 2.2.199 the 2nd respondent reconveyed an extent of Ac.1.01 cts to the legal heirs of late N. Viswanadham, in Sy.No. 121/1A, Vadlapudi village, for which Award No. 3/80 dated 9.5.190 was passed.

vii) The petitioner filed W.P.No 24630/97 questioning the acquisition of the respondents alleging selective reconveyance of the acquired lands. This writ petition was disposed of on 11.6.1999 directing the petitioner to make a representation on which respondents 1 and 3 were directed to take a decision within the specified time (8 weeks).

viii) On 8.7.1999 the petitioner sent separate representations to the respondents 1 and 3.

ix) On 4.9.2000 the 3rd respondent intimated the petitioner that the said respondent decided to reconvey/surrender the land and it addressed the 2nd respondent to take necessary action.

x) On .2.2001 the Joint Collector, Visakhapatnam inspected the lands and sent proposals to the 5th respondent recommending reconveyance of the land.

xi) On 16.9.2002 the 3rd respondent informed the petitioner that it decided to reconvey the land and addressed the 2nd respondent to take necessary action.

xii) On 13.10.2005 the State Government in the Industries & Commerce Department, by a memo informed the 1st respondent that the lands acquired, which were not utilized for the railway siding of VSP should be utilized for any other public purpose in view of G.O.Ms.No. 783, Revenue Department dated 9.8.1998. This was in continuation of an earlier letter of the Government dated 27.5.2005 directing the 1st respondent not to reconvey the lands. The Government also directed the 1st respondent not to reconvey as the land is required for rehabilitation of the displaced persons of the Gangavaram Port.

The above is the broad chronology of events.

The members of the petitioner Association, whose lands were acquired in 1979-80 for the purpose of initially providing a railway track for the siding for the VSP, had no notice of the acquisition proceedings though they had acquired title to the lands pursuant to the registered sale deeds. They therefore had perhaps a legitimate cause to challenge the acquisition proceedings. They did not however choose to do so. The acquisition proceedings have thus become final about 2½ decade ago and the compensation amount in respect of these lands is stated to have been deposited in the civil court u/Sec. 31(2) of the Act. This is an unfortunate sequence of events, but a fact.

The initial purpose for which the acquisition was made did not fructify and the lands were assigned to the 3rd respondent who has initially intended them for utilization as industrial housing. The 3rd respondent also declined to utilize the lands in Kanithi and Vadlapudi villages for its own reasons and surrendered these lands to the control of the Government. During 1985, '87 and '89 some of the acquired lands were reconveyed by the proceedings of the 2nd respondent dated 6.9.85, 12.4.87 and 2.2.89 though awards were earlier passed in respect of such lands and compensation also drawn. The petitioner association was thereafter constituted as a culmination of the unproductive efforts of its members to get a similar benefit (of reconveyence). In 1997 the petitioner filed W.P.No. 24630/97 claiming parity of treatment of reconveyance of land in favour of its members. Meanwhile the situation on the ground had altered necessitating a policy decision by the State that the acquired lands be utilized for the purpose of accommodating and rehabilitating persons who were displaced on account of execution of the Gangavaram Port. Consequently it is now decided by the State that the lands be not reconveyed, but should be used for rehabilitation.

In the light of the circumstances adverted to above, in the considered view of this court, the conduct of the State and of the other respondents does not tantamount to hostile discrimination. During 1985-89 the position was that the 3rd respondent did not require these lands for industrial housing and the problem of rehabilitating Gangavaram Port displacees did not yet arise. In the circumstances the State through the 2nd respondent reconveyed the lands to such of the owners who submitted applications by then. It does not appear from the record that the members of the petitioner association had made any applications along with the other owners in whose favour lands were reconveyed, for the benefit of reconveyance. The members of the petitioner association appear to have woken up to this productive strategy later, by which time the ground reality had altered. In the circumstances no question of hostile discrimination arises, in fact. The members of the petitioners association are also not entitled as of right to reconveyance of the lands in question.

In ***Patil*** (1 supra) the Supreme Court categorically held that a land acquired for a public purpose could be utilized for any other public purpose, though the use of it was intended for the original public purpose. It also held that the land which remained unutilized was not required to be restituted to the erstwhile owner, to whom adequate compensation was paid according to the market value as on the date of the notification.

In ***Gulam Mustafa and others v The State of Maharashtra and others(2)*** the Supreme Court spelt out the principle that once the original acquisition is valid and title has vested in the public authority, how it uses the acquired land is no concern of the original owner. The Supreme Court held that there is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the

original acquisition process.

To a similar effect is the decision of the Supreme Court in ***C.Padma and others v Dy. Secretary to the Government of T.N. and others (3)***.

In the light of the law consistently declared, the members of the petitioner association have no right to reconveyance and no case of hostile discrimination or arbitrary and dissimilar treatment by the State is made out in the facts and circumstances of the case.

For the aforesaid reasons there are no merits in the writ petition. The writ petition is accordingly dismissed. No order as to costs.

Dt: ----------
Pvsn Justice G.Raghuram

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1 (1996)6 SCC 405
2 (1976) 1 SCC 800
3 (1997) 2 SCC 627